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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re S.M., a Person Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.S.,

Defendant and Appellant.

B294135

(Los Angeles County  
Super. Ct. No. DK16316A)

APPEAL from an order of the Superior Court of Los Angeles County, Stephen C. Marpet, Juvenile Court Referee. Affirmed.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel for Plaintiff and Respondent.

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K.S., the mother of S.M., appeals from the order issued by the dependency court when it terminated dependency jurisdiction over S.M. She argues that the court should have granted her more frequent visitation or monthly telephone calls with S.M. We affirm the order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

S.M., born in 2007, was placed in the sole legal and physical custody of her father, Benjamin M., in 2009 because Mother had been “huffing,” or inhaling chemical fumes in order to get high, while S.M. was present. In March 2016, S.M. came to the attention of the Department of Children and Family Services after she disclosed an incident of domestic abuse between Father and Beatriz R., S.M.’s stepmother.<sup>1</sup>

DCFS did not detain S.M. but filed a petition under Welfare and Institutions Code section 300, subdivisions (a) (serious physical harm) and (b) (failure to protect). S.M. remained in the custody of Beatriz, whom she considered to be her mother. Father was incarcerated in the early stages of the dependency proceedings, and he was deported upon his release.

Mother’s location was initially unknown to DCFS. After locating Mother, DCFS amended the dependency petition to add an allegation under section 300, subdivision (b) that Mother’s past and current substance abuse placed S.M. at risk of serious physical harm. Recognizing that S.M. had not seen Mother since she was very young, the court authorized monitored visitation with S.M. in a therapeutic setting only, while granting DCFS discretion to liberalize visitation in consultation with S.M.’s

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<sup>1</sup> The court found Beatriz to be S.M.’s presumed mother.

therapist. Visitation did not immediately begin, however, because S.M. did not want to see Mother.

Mother reported receiving various mental health diagnoses, including bipolar disorder, depression, anxiety, post-traumatic stress disorder, and attention deficit hyperactivity disorder. Mother had been hospitalized in 2015 and diagnosed with psychosis, and medication had been recommended to her upon release from the hospital. She was again hospitalized in 2016, and she was given psychotropic medication during that hospitalization. Upon her discharge from the hospital in 2016, Mother had been referred to an outpatient mental health services agency for medication and services, but she was not taking any medication or receiving any mental health services. She stated that she had used marijuana two months earlier and had “a few sips” of alcohol four or five months earlier. Mother told the social worker that she believed people were controlling her thoughts.

The maternal grandmother reported that Mother had been diagnosed with schizophrenia but did not take her prescribed medication. The maternal grandmother told DCFS that after Mother was released from a psychiatric hospital in 2015, Mother discontinued her psychotropic medication and began drinking alcohol. One day, without telling the other adult in the home that she was leaving, Mother left her other two children in the residence with an open container of alcohol on a table. When the maternal grandmother confronted Mother about this behavior, Mother attempted to leave with the children. The maternal grandmother feared for the children and said she was calling the police. Mother “became agitated, manic, and out of control. She broke several windows from the outside of the home. When maternal grandmother opened the front door, [M]other entered

the home, removed several knives from the butcher block, and threw them at [the] maternal grandmother.” Maternal grandmother’s boyfriend physically restrained Mother. Mother’s other children now lived with maternal grandmother, as Mother had moved and left them behind.

On September 14, 2016, while at a mental health services agency for evaluation, Mother became frustrated and said that if she did not get S.M. back, she would “go[] after everyone and anyone, I’m gonna go on a killing spree.” The agency contacted law enforcement, but Mother left the building before officers arrived. According to DCFS, when Beatriz learned what Mother had said, she was “shocked but not surprised” at the statements because of Mother’s extensive mental health history and her previous negative telephone conversations with Mother concerning S.M. Beatriz obtained a three-year restraining order against Mother for herself, S.M., and Beatriz’s biological children (S.M.’s stepsiblings). The order barred visitation.

In December 2016, the court sustained the allegations of the petition and declared S.M. a dependent child. The court removed S.M. from the custody of Mother and Father, and entered a home of parent order placing S.M. with Beatriz. The court denied Mother visitation. The court ordered enhancement services for Mother and ordered her to participate in individual counseling, a parenting program, a six-month alcohol and drug program with aftercare, weekly random drug and alcohol testing, psychiatric counseling, a 12-step program, and an anger management program. The court directed Mother’s individual counseling to address all case-related issues, including family history and dysfunction, substance abuse, violence, and mental

health issues. The court also ordered Mother to take all prescribed psychotropic medications.

As of March 2017, Mother had enrolled in an outpatient treatment program and was in full compliance with program requirements. Her case manager found her motivated, engaged, and ready to change. Mother's drug tests were negative. She began attending a parenting program. Mother also underwent a psychiatric evaluation, in which the evaluator documented mental health and substance abuse problems dating back to her early adolescence. As a teenager Mother began using cocaine, methamphetamine, ecstasy and aerosols. She was hospitalized repeatedly for suicide attempts, and estimated that she had attempted to commit suicide five times by such means as hanging, choking, cutting, and jumping in front of a car. Her last suicide attempt had been approximately one year earlier. The evaluator noted that Mother had tactile and potentially auditory hallucinations and some paranoid ideation. She had "unusual beliefs that medications are not necessary at this time because she/we might be getting them through the environment somehow." The evaluator concluded that Mother had "a complex psychiatric and substance abuse history that crosses . . . diagnostic boundaries," and that psychotropic medications were likely appropriate.

In April 2017, the court granted Mother permission to write letters to S.M. As of June 2017, Mother had written to S.M. twice, and S.M. had replied. DCFS had no concerns about the written communication, and it also reported that Mother had been fully compliant with her case plan despite a number of personal, financial, and institutional barriers. DCFS wrote, "These barriers include but are not limited to [Mother's] move to

Los Angeles where [M]other has virtually no support, no knowledge of the area or available services, and experienced long term homelessness. Mother . . . has overcome these barriers and a brief incarceration to reach her current situation which includes full compliance in the Case Plan and personal growth and stability. Despite this growth, the Department is unable to recommend any custody or visitation between [Mother] and [S.M.] due to the current 3 year restraining order.”

Throughout 2017, Mother continued her full compliance with her case plan: She completed outpatient drug treatment with individual therapy, as well as a parenting program. She attended Alcoholics Anonymous/Narcotics Anonymous meetings and anger management meetings. She underwent weekly drug testing and had no positive tests. By the end of the year, S.M.’s therapist believed S.M. was ready to visit with Mother, and DCFS recommended monitored visitation in a therapeutic setting. In January 2018 Mother began meeting with S.M.’s therapist to prepare for visits. The therapist reported that S.M. wanted to visit with Mother.

In February 2018, the court modified the restraining order to permit Mother two monitored visits per month with S.M., to take place in a therapeutic setting. Visits consisted of one hour of family therapy and one and one-half to two hours of monitored visitation. The therapist reported that the joint sessions were going well, and DCFS found Mother’s visits to be appropriate. “During the visitation, [S.M.] and [Mother] appear to have fun doing activities that mother organizes including making slime and face painting. Mother is very patient and catering to [S.M.] [S.M.] calls [Mother] ‘mom’ often throughout the visits and seems to structure her sentences very specifically to be able to include

‘mom’ in them. [S.M.] is also physically affectionate toward mother, hugging her and putting her arm around mother’s shoulder while doing something. [S.M.] does not yet appear to view [Mother] as an authority figure but constantly looks to her for validation.” DCFS observed in April 2018 that S.M. responded well to visitation, looked forward to visits, and attempted to prolong the visits.

Mother failed to appear for three consecutive scheduled drug tests in May 2018. In her next two drug tests, from late May and early June 2018, Mother tested positive for marijuana.

In August 2018, DCFS reported that although visitation remained appropriate, both the social worker and the therapist had observed “a decline in the quality of the visits between [S.M.] and [Mother]. [S.M.] and [Mother] have less conversation during their monitored visits and appear less engaged in their family therapy sessions.” County counsel represented to the court in September 2018 that the “therapeutic process is sort of broken down and they sit there during that time.” The therapist reported that neither S.M. nor Mother was actively participating and that there was nothing to address in family therapy sessions because S.M. and Mother had limited contact with each other. Family therapy was discontinued and visits were held in neutral settings. As of October 2018, DCFS reported that S.M. and Mother interacted appropriately at visits and appeared to enjoy their time together. S.M. said she liked visiting with Mother “very much.”

In November 2018, the court terminated dependency jurisdiction with an order giving Beatriz full custody of S.M. The court granted Mother monitored visitation twice per month for two hours per visit, contingent on Mother providing proof that

she was seeing her psychiatrist monthly and taking her medication. Mother requested weekly visitation or one telephone call per month with S.M. but the court refused. Mother appeals.

## DISCUSSION

Where, as here, the juvenile court terminates jurisdiction in a dependency case, it is vested with broad discretionary authority to issue custody and visitation orders. (§ 362.4 [when terminating dependency jurisdiction, the court “may issue . . . an order determining the custody of, or visitation with, the child”]; *In re Chantal S.* (1996) 13 Cal.4th 196, 203-204.) In any custody or visitation determination, the primary consideration must be the best interests of the child. (*Id.* at p. 206; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268; *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.) The court is not restrained by any preferences or presumptions in issuing its order, but rather, must consider the totality of the child’s circumstances. (*In re Nicholas H.*, at p. 268; *In re Jennifer R.*, at p. 712; *In re Roger S.* (1992) 4 Cal.App.4th 25, 30-31.) We review the juvenile court’s visitation orders for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

Mother contends that the juvenile court abused its discretion when it declined to increase her visitation with S.M. because they had been visiting successfully for 11 months, S.M. liked the visits, and there were no safety concerns about the visits. She argues that the family ties between herself and S.M. “could have been preserved and strengthened by allowing S.M. to have more contact with her mother.” She argues that increased visitation was in S.M.’s best interest.

We cannot say that the juvenile court abused its discretion. As Mother notes, she did fully comply with her case plan, and her



dedication and consistent participation in services earned not only praise from DCFS but also its recommendation that she be permitted to visit with S.M.—despite being subject to a restraining order because she had threatened to kill people if her daughter was not placed with her. Mother’s visitation was uniformly appropriate, and S.M. enjoyed the visits, but none of the information before the court suggested that increasing contact beyond the previously-ordered two visits per month would promote S.M.’s best interests. Particularly in light of Mother’s recent missed and positive drug tests, the court did not abuse its discretion when it refused Mother’s request for weekly visitation or monthly telephone calls.

#### **DISPOSITION**

The order is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J.